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RE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

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DOCKET NO. T-03924A-00-0646

DECISION NO. 63523

**ORDER**

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF  
ZONE TELECOM, INC. FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES EXCEPT  
LOCAL EXCHANGE SERVICES

Open Meeting  
March 27 and 28, 2001  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On August 30, 2000, Zone Telecom, Inc. ("Zone" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. Applicant is a Delaware corporation authorized to do business in Arizona.

4. Applicant is a switchless reseller, which purchases telecommunications services from AT&T.

5. On November 2, 2000, Applicant filed Affidavits of Publication indicating compliance with the Commission's notice requirements.

6. On January 4, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report in this matter.

2       7.       Staff stated that the Applicant provided audited financial statements of its Parent  
3 Company, e-Kong Group Limited ("e-Kong") for the year ended December 31, 1999. Those  
4 financial statements list assets of \$22.6 million, shareholders' equity of \$21.7 million, and a net loss  
5 of \$9.7 million. Based upon this information, Staff believes that Applicant lacks adequate financial  
6 resources to be allowed to charge customers any prepayments, advances or deposits without  
7 establishing an escrow account or posting a surety bond. The Applicant filed a letter with the  
8 Commission on October 2, 2000, stating that it does not charge its customers for any prepayments,  
9 advances or deposits.

10       8.       The Staff Report stated that Applicant has no market power and the reasonableness of  
11 its rates would be evaluated in a market with numerous competitors.

12       9.       In its Report, Staff recommended the following:

13               (a)     Applicant should be ordered to comply with all Commission rules, orders and  
14 other requirements relevant to the provision of intrastate telecommunications services;

15               (b)     Applicant should be ordered to maintain its accounts and records as required  
16 by the Commission;

17               (c)     Applicant should be ordered to file with the Commission all financial and other  
18 reports that the Commission may require, and in a form and at such times as the  
Commission may designate;

19               (d)     Applicant should be ordered to maintain on file with the Commission all  
20 current tariffs and rates, and any service standards that the Commission may require;

21               (e)     Applicant should be ordered to comply with the Commission's rules and  
22 modify its tariffs to conform to these rules if it is determined that there is a conflict  
between the Applicant's tariffs and the Commission's rules;

23               (f)     Applicant should be ordered to cooperate with Commission investigations of  
24 customer complaints;

25               (g)     Applicant should be ordered to participate in and contribute to a universal  
26 service fund, as required by the Commission;

27               (h)     Applicant should be ordered to notify the Commission immediately upon  
28 changes to the Applicant's address or telephone number;

1 (i) Applicant's intrastate interexchange service offerings should be classified as  
2 competitive pursuant to A.A.C. R14-2-1108;

3 (j) The rates proposed by the Applicant in its most recently filed tariffs should be  
4 approved on an interim basis. The maximum rates for these services should be the  
5 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
6 for the Applicant's competitive services should be the Applicant's total service long  
run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;  
and

7 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
8 competitive service, the rate stated should be the effective (actual) price to be charged  
for the service as well as the service's maximum rate.

9 10. Staff recommended approval of the application subject to the following conditions:

10 (a) Applicant should be ordered to file conforming tariffs within 30 days of an  
11 Order in this matter, and in accordance with the Decision;

12 (b) Applicant should be required to file in this Docket, within 18 months of the  
13 date it first provides service following certification, sufficient information for Staff  
14 analysis and recommendation for a fair value finding, as well as for an analysis and  
15 recommendation for permanent tariff approval. This information must include, at a  
minimum, the following:

16 1. A dollar amount representing the total revenue for the first twelve  
17 months of telecommunications service provided to Arizona customers by the  
Applicant following certification, adjusted to reflect the maximum rates that  
18 the Applicant has requested in its tariff. This adjusted total revenue figure  
could be calculated as the number of units sold for all services offered times  
19 the maximum charge per unit.

20 2. The total actual operating expenses for the first twelve months of  
21 telecommunications service provided to Arizona customers by the Applicant  
following certification.

22 3. The value of all assets, listed by major category, used for the first  
23 twelve months of telecommunications service provided to Arizona customers  
24 by the Applicant following certification. Assets are not limited to plant and  
equipment. Items such as office equipment and office supplies should be  
25 included in this list.

26 (c) Applicant's failure to meet the condition to file sufficient information for a fair  
27 value finding and analysis and recommendation of permanent tariffs shall result in the  
expiration of the certificate of the tariffs.

28 11. On August 29, 2000, the Court of Appeals, Division One ("Court") issued its Opinion

1 in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding  
2 that "the Arizona Constitution requires the Commission to determine fair value rate base ("FVRB")  
3 for all public service corporations in Arizona prior to setting their rates and charges."

4 12. On October 26, 2000, the Commission filed a Petition for Review to the Arizona  
5 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this  
6 time, we are going to request FVRB information to insure compliance with the Constitution should  
7 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We are  
8 also concerned that the cost and complexity of FVRB determinations must not offend the  
9 Telecommunications Act of 1996.

10 13. No exceptions were filed to the Staff Report, nor did any party request that a hearing  
11 be held.

#### 12 CONCLUSIONS OF LAW

13 1. Applicant is a public service corporation within the meaning of Article XV of the  
14 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

15 2. The Commission has jurisdiction over Applicant and the subject matter of the  
16 application.

17 3. Notice of the application was given in accordance with the law.

18 4. Applicant's provision of resold intrastate telecommunications services is in the public  
19 interest,

20 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive  
21 intrastate telecommunications as a reseller in Arizona.

22 6. Staff's recommendations in Findings of Fact Nos. 9 and 10 are reasonable and should  
23 be adopted.

#### 24 ORDER

25 IT IS THEREFORE ORDERED that the application for Zone Telecom, Inc. for a Certificate  
26 of Convenience and Necessity for authority to provide competitive resold interexchange  
27 telecommunications services, except local exchange services, shall be and the same is hereby granted,  
28 except that Zone Telecom, Inc. shall not be authorized to charge customers any prepayments,

1 advances or deposits. In the future, if Zone Telecom, Inc. desires to initiate such charges, it must file  
2 information with the Commission that demonstrates the Applicant's financial viability. Staff shall  
3 review the information provided and file its recommendation concerning the financial viability. Staff  
4 shall review the information provided and file its recommendation concerning financial viability  
5 and/or the necessity of obtaining a performance bond within thirty (30) days of receipt of the  
6 financial information, for Commission approval.

7 IT IS FURTHER ORDERED that Zone Telecom, Inc. shall comply with the Staff  
8 recommendations set forth in Findings of Fact Nos. 9 and 10.

9 IT IS FURTHER ORDERED that Zone Telecom, Inc. shall file the following FVRB  
10 information within 18 months of the date that it first provides service. The FVRB shall include a  
11 dollar amount representing the total revenue for the first twelve months of telecommunications  
12 service provided to Arizona customers Zone Telecom, Inc. following certification, adjusted to reflect  
13 the maximum rates that Zone Telecom, Inc. requests in its tariff. This adjusted total revenue figure  
14 could be calculated as the number of units sold for all services offered times the maximum charge per  
15 unit Zone Telecom, Inc. shall also file FVRB information detailing the total actual operating  
16 expenses for the first twelve months of telecommunications service provided to Arizona customers  
17 Zone Telecom, Inc. following certification. Zone Telecom, Inc.. shall also file FVRB information  
18 which includes a description and value of all assets, including plant, equipment, and office supplies,  
19 to be used to provide telecommunications service to Arizona customers for the first twelve months  
20 following Zone Telecom, Inc.'s certification.

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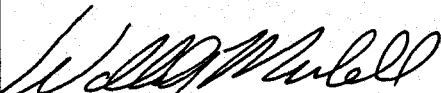
27 ...

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IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, Zone Telecom, Inc. shall notify the Compliance Section of the Arizona Corporation Commission of the date that it will begin or has begun providing service to Arizona customers.

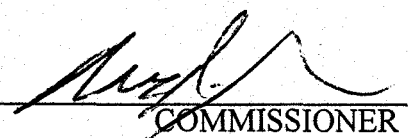
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



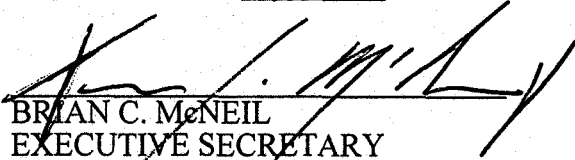
CHAIRMAN

COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of March, 2001.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

AG:mlj

1 SERVICE LIST FOR: ZONE TELECOM, INC.

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3 DOCKET NO.: T-03924A-00-0646

4 Lawton Bloom  
5 ZONE TELECOM, INC.  
6 Woodland Falls Corporate Center  
7 200 Lake Drive East, Suite 200  
8 Cherry Hill, New Jersey 08002

9 Marissa G. Repp  
10 HOGAN & HARTSON, LLP  
11 555 Thirteen Street, NW  
12 Washington, D.C. 20004  
13 Attorney for Applicant

14 Christopher Kempley, Chief Counsel  
15 Legal Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Deborah Scott, Director  
20 Utilities Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

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